

**Remarks**

This Amendment is responsive to the Advisory Action mailed February 19, 2004. Claims 1, 7, 9, 27, 31, and 32 have been amended. Claims 26 and 34 have been cancelled. New claims 35-40 have been added.

Claims 1-2, 5-7, 9, 13 and 27-33 stand rejected under 35 USC § 103(a) as being unpatentable over Besonen, et al. (U.S. Patent No. 5,307,753) in view of Bowers (U.S. Patent No. 6,196,609).

In the final rejection, with reference to claims 1 and 27, Besonen, et al. was stated to provide a counterbalance capable of use on a tailgate or a motor vehicle which at least partially controls a load applied to the counterbalance. The counterbalance was stated to have an elastic element (30) that at least partially counters the load; a flexible extension limiter (25) that provides a stop which defines a fully extended position of the counterbalance and which counters loads applied to the counterbalance after the counterbalance is in the fully extended position.

In reference to claims 2 and 28, Besonen, et al. was stated to provide a counterbalance where the elastic element is a spring.

Referring to claims 5-6 and 29-30, Besonen, et al. was stated to provide a counterbalance where the flexible extension limiter is a material strap.

Regarding claims 7, 9 and 31-32, Besonen, et al. was stated to provide a counterbalance including a protective housing that at least partially covers the elastic member and the flexible extension limiter.

In reference to claims 13 and 33, the Examiner stated that Besonen, et al. provides the protective housing to include first and second tubes, with the first tube having an opening that telescopically receives a portion of the second tube.

The Examiner acknowledged that Besonen lacks the specific teaching of using the counterbalance in conjunction with a tailgate. The Examiner stated that Bowers teaches the use of a counterbalance on a tailgate and that it would have been obvious to one of ordinary skill in the art at the time of the invention to have provided the counterbalance of Besonen on a tailgate as taught by Bowers in order to control the movement of the gate during opening and closing. The applicant respectfully traverses this rejection.

In the Advisory Action, the Examiner stated it is within the ordinary skill in the art to provide the device of Besonen, et al. on a tailgate as taught by Bower. The Examiner recommended that the applicant claim the orientation of the device relative to the tailgate in order to overcome this rejection.

Accordingly, the applicant has amended independent claims 1 and 27 to add the limitation of the counterbalance assembly having a housing with a first end attached to the tailgate and a second end attached to the vehicle body. New dependent claims 35-40 have been added. Claims 35 and 38 add the limitation of the first tube being attached to the vehicle body, and the second tube being attached to the tailgate. Claims 36 and 39 add the limitation of the housing being in an angled position when the counterbalance is in a fully extended position. Claims 37 and 40 add the limitation of the housing being in a vertical position when the counterbalance is in a fully retracted position.

In contrast, Bowers shows a spring mechanism which is compressed or extended by a cable 23 which is pulled by lowering the tailgate. The spring housing 21 remains in a horizontal orientation during raising and lowering of the tailgate.

The present invention adds a flexible expansion limiter such as a strap to the spring to provide a solid stop to the further extension of the spring. There is simply no teaching or suggestion in Bowers to add a flexible expansion limiter such as a strap to the spring. The benefit of adding a flexible strap to a tailgate counterbalance is apparent only after reviewing the present specification. Furthermore, the counterbalance mechanism of Besonen is used to absorb shock motion for use with marine or water equipment. There is simply no teaching or suggestion in Besonen for using its counterbalance mechanism with a tailgate. As previously stated, Besonen is simply non-analogous art.

In conclusion, Bowers simply does not teach or suggest a spring housing which moves with respect to the tailgate between a vertical and angled position. Rather, referring to Figures 2 and 3 of Bowers, the spring housing 21 remains in a horizontal orientation when the tailgate is in a closed position and an open position. Besonen does not teach or suggest use of the counterbalance in

connection with a tailgate. Accordingly, claims 1 and 27, and claims 2, 5, 6, 7, 9, 13, 26, 35, 36, 37 and 28, 29, 30, 31, 32, 33, 34, 38, 39, and 40 dependent thereon are in condition for allowance.

**Conclusion**

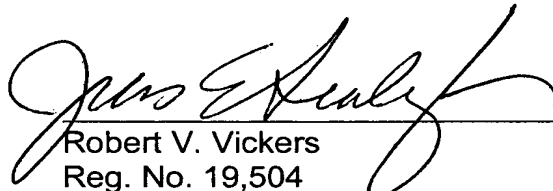
In view of the above arguments and comments presented, it is respectfully submitted that all pending claims are patentably distinct and unobvious over the art of record.

Allowance of all claims and early notice to that effect is respectfully requested.

Respectfully submitted,

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